IN THE

Supreme Court of the United States

OCTOBER TERM, 1980

No. 79-1356

KATHY SUE JOHNSON, ET AL.,
Petitioners,

vs.

BOARD OF EDUCATION
OF THE CITY OF CHICAGO, ET. AL.,
Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

SUGGESTION OF MOOTNESS

THOMAS F. GARDNER
PHILIP S. BECK
ROBERT J. BATES, JR.
Attorneys for Respondent

Of Counsel:
KIRKLAND & Ellis
200 East Randolph Drive
Chicago, Illinois 60611

CHAS. P. YOUNG–CHICAGO

TABLE OF CONTENTS

PAGE

RECENT EVENTS RENDER THIS CASE INAPPROPRIATE FOR ADJUDICATION 1

THIS CASE SHOULD BE DISMISSED AS MOOT OR, IN THE ALTERNATIVE, NO LONGER RIPE 3

CONCLUSION 6

TABLE OF CITATIONS

	PAGE
Aetna Life Ins. Co. v. *Haworth,* 300 U.S. 227 (1937)	4
Ashwander v. *Tennessee Valley Authority,* 297 U.S. 288 (1936)	4
DeFunis v. *Odergaard,* 416 U.S. 312 (1974)	4
Lake Carriers' Ass'n. v. *MacMullen,* 406 U.S. 498 (1972)	5
Liner v. *Jafco, Inc.,* 375 U.S. 301 (1964)	4
North Carolina v. *Rice,* 404 U.S. 244 (1971)	4
Powell v. *McCormack,* 395 U.S. 486 (1969)	4
Preiser v. *Newkirk,* 422 U.S. 395 (1975)	4
Rescue Army v. *Municipal Court,* 331 U.S. 549 (1947)	5
Sanks v. *Georgia,* 401 U.S. 144 (1971)	5
Sibron v. *New York,* 392 U.S. 40 (1968)	4
United States v. *Fruehauf,* 365 U.S. 146 (1961)	5
United States v. *W. T. Grant Co.,* 345 U.S. 629 (1953)	4

IN THE

Supreme Court of the United States

OCTOBER TERM, 1980

No. 79-1356

KATHY SUE JOHNSON, ET AL.,
Petitioners,

vs.

BOARD OF EDUCATION OF THE CITY OF CHICAGO, ET. AL.,
Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

SUGGESTION OF MOOTNESS

Respondent, the Board of Education of the City of Chicago, moves to dismiss the writ of certiorari in this case on the ground that recent developments have rendered it moot or, at the very least, have so changed the focus of the constitutional questions presented as to render them no longer ripe for review. For the reasons explained below, the Board also respectfully requests that this motion be ruled upon prior to the due date for the Board's brief on the merits, which is currently October 15, 1980.

RECENT EVENTS RENDER THIS CASE INAPPROPRIATE FOR ADJUDICATION

Petitioners' challenge is to a pupil assignment plan, in effect at only two of Chicago's 61 general high schools, that

determined admissions by racial quotas. The Board's stated purpose for the quotas was to preserve integration and relieve overcrowding at these two schools. Petitioners complained that the quotas had the effect of excluding only blacks, that the excluded students were not afforded a reasonable opportunity to attend other integrated schools and that the Board had declined to adopt more far-reaching students assignment policies that would have achieved more integration while allocating the attendant "burdens" equitably among racial and ethnic groups.

Petitioners' contentions have been rendered academic by recent and dramatic events. On September 24, 1980, the Board became the first large Northern school district to enter into a consent decree with the United States Department of Justice obligating it to "develop and implement a system-wide plan to remedy the present effects of past segregation of Black and Hispanic students." (App. 5) The four "Basic Objectives" of the desegregation plan are:

> *"Desegregated Schools.* The plan will provide for the establishment of the greatest practicable number of stably desegregated schools, considering all the circumstances in Chicago.
>
> *"Compensatory Programs in Schools Remaining Segregated.* In order to assure participation by all students in a system-wide remedy and to alleviate the effects of both past and ongoing segregation, the plan shall provide educational and related programs for any Black or Hispanic schools remaining segregated.
>
> *"Participation.* To the greatest extent practicable, the plan will provide for desegregation of all racial and ethnic groups, and in all age and grade levels above kindergarten.
>
> *"Fair Allocation of Burdens.* The plan shall ensure that the burdens of desegregation are not imposed arbitrarily on any racial or ethnic group." (App. 5)

The decree also establishes a timetable requiring that a detailed plan be adopted by the Board by March 11, 1981 and

that the plan be implemented at the start of the 1981-1982 school year. (App. 11, 17) Finally, the decree ensures compliance with the basic objectives and timetable by providing for continuing jurisdiction and resolution of disputes by the District Court. (App. 4, 11)

In addition to agreeing to this unprecedented decree, the Board has also abolished the admission quotas specifically at issue in this case. On October 1, 1980, the Reverend Kenneth Smith, President of the Board, exercised his authority to discontinue the quota plans at the end of the 1980-1981 school year. (App. 18) Thus, quite apart from the effect of the decree requiring a system-wide desegregation plan for the next school year, this case has been mooted by action identical to that sought by petitioners—abolition of the admissions quotas.

THIS CASE SHOULD BE DISMISSED AS MOOT OR, IN THE ALTERNATIVE, NO LONGER RIPE

When the petition for certiorari was granted in this case, a ripe controversy existed concerning the constitutionality of the admissions quotas for the two schools in question, Gage Park and Morgan Park high schools. While the Board maintained that these quotas constituted a permissible exercise of discretion to relieve overcrowding and preserve integration at schools undergoing racial change, petitioners alleged that they placed the entire burden on blacks and that the Board's failure to adopt more far-reaching programs undermined its claimed benign purpose. The controversy is now moot, for the quotas themselves have been terminated. Moreover, even if some vestige of an Article III "case or controversy" remains, the Board's judicially-enforceable commitment to implement a system-wide desegregation plan so alters the focus of the constitutional issues that the case is no longer ripe for review.

Because petitioners have received all they demanded,* the former dispute between the parties has ceased to be "definite and concrete" and no longer "touch[es] the legal relations of

* Petitioners sought injunctive relief only, not damages.

parties having adverse legal interests." *Aetna Life Ins. Co.* v. *Haworth*, 300 U.S. 227, 240-41 (1937); *DeFunis* v. *Odergaard*, 416 U.S. 312, 317 (1974). Dismissal is therefore required under the familiar rule that "federal courts are without power to decide questions that cannot affect the rights of litigants in the case before them." *North Carolina* v. *Rice*, 404 U.S. 244, 246 (1971). In this case, the mootness doctrine furthers the general policy of avoiding constitutional pronouncements that are not absolutely necessary. *See Ashwander* v. *Tennessee Valley Authority*, 297 U.S. 288 (1936). The doctrine is not merely one of prudence, however, for a federal court's inability "to review moot cases derives from the requirement of Art. III of the Constitution under which the exercise of judicial power depends on the existence of a case or controversy." *Liner* v. *Jafco, Inc.*, 375 U.S. 301, 306 n.3 (1964); *see also Powell* v. *McCormack*, 395 U.S. 486, 496 n.7 (1969); *Sibron* v. *New York*, 392 U.S. 40, 50 n.8 (1968).

Nor can petitioners save this case from mootness by arguing that the abolition of the quotas is a voluntary cessation of illegal conduct. It is well-settled that voluntary cessation of allegedly illegal conduct does in fact moot a controversy if "there is no reasonable expectation that the wrong will be repeated." *United States* v. *W.T. Grant Co.*, 345 U.S. 629, 633 (1953). Here, the Board is bound by judicial decree to implement a system-wide desegregation plan next Fall, and therefore it is precluded from reinstituting an admissions policy under which quotas are employed only at Gage Park and Morgan Park. Consequently, it cannot be said in this case that "[t]he defendant is free to return to his old ways." *Id.* at 632; *see also Preiser* v. *Newkirk*, 422 U.S. 395, 402-03 (1975).

Indeed, even if the quotas had not been discontinued, the consent decree itself would render this case inappropriate for adjudication, for the quotas would be administered in the entirely new context of a system-wide desegregation plan. Petitioners have emphatically stated that, within this

broader context, they would have no complaint if some black students were excluded from Gage Park and Morgan Park:

> "At the outset, it is important to note what this case does *not* involve.
>
> "Petitioners do not contend that school children have an absolute right to attend a neighborhood school. Nor do they urge that a school board which treats the races equitably may not take race into account in school assignments as part of an effort to desegregate its school system." (Petitioners' Brief 11, emphasis in original).

Indeed, petitioners conceded that, if quotas were part of a "system-wide desegretation effort [which] distributes burdens equitably between the races," there would be "no equal protection violation" and therefore "no basis for invalidating a desegregation program." (*Id.* at 15 n.*.)

Because the Board is legally required to institute just such a "system-wide desegregation effort," the constitutional issues raised by petitioners are no longer in their original focus and therefore no longer ripe for review. *See generally Rescue Army* v. *Municipal Court,* 331 U.S. 549 (1947). The constitutionality of admissions quotas for particular schools will be largely determined by the overall shape taken by the system-wide plan over the next several months. This Court routinely abstains from deciding issues of federal law that may be "avoid[ed] or significantly modif[ied]" by a State court's impending resolution of statutory ambiguities. *Lake Carriers' Ass'n* v. *MacMullen,* 406 U.S. 498, 512 (1972). The same ripeness considerations counsel dismissal here, for the broad issues raised by petitioners will be avoided or significantly modified when the system-wide plan is developed this Spring and implemented next Fall. As this Court observed in *Sanks* v. *Georgia,* 401 U.S. 144, 152 (1971):

> "The focus of this lawsuit has been completely blurred, if not altogether obliterated, and our judgment on the important issues involved is potentially immaterial. Indeed, the instant case is obviously more compelling than [*United States* v. *Fruehauf,* 365 U.S. 146 (1961)],

since this one presents an issue of constitutional, not statutory, interpretation."

Finally, the Board respectfully suggests that further litigation of the instant case would hinder rather than advance its efforts to implement a system-wide desegregation plan with minimum acrimony. In its September 24, 1980 Resolution approving entry of the consent decree, the Board noted "that litigation over desegregation liability issues would be protracted, divisive in the community rather than healing, and wasteful of resources that can better be devoted to achieving the educational goals of the school system." (App. 1) Argument on the merits of this case could involve just such divisiveness at a time when the Board has undertaken the delicate task of moving ahead with desegregation without regard to the legality or illegality of the conduct of its predecessors. Because the Board seeks to avoid assuming an adversary's posture on these matters, it respectfully requests this Court to rule on the instant motion prior to the due date for its brief on the merits, which is presently October 15, 1980.

CONCLUSION

For the foregoing reasons, the Board moves that the writ of certiorari be dismissed.

THOMAS F. GARDNER
PHILIP S. BECK
ROBERT J. BATES, JR.

Attorneys for Respondent

KIRKLAND & ELLIS
200 E. Randolph Drive
Chicago, Illinois
(312) 861-2000

October 2, 1980

APPENDIX

RESOLUTION PROVIDING FOR EXECUTION AND FILING OF CONSENT DECREE

WHEREAS, the Board of Education of the City of Chicago (the "Board") believes that racial isolation is educationally disadvantageous to all students, and that educational benefits will accrue to all students through the greatest practicable reduction in the racial isolation of students; and

WHEREAS, the Board believes that, in consultation with experts, staff and the citizens of the City of Chicago, plans and procedures for the reduction of racial isolation should be developed and implemented by the Board because of the Board's familiarity with and sensitivity to the unique situation presented in Chicago and the Board's ability to design a solution that best meets the needs of the Chicago school system; and

WHEREAS, the Board also believes that a creative approach to the desegregation of the school system—not only physically but in terms of curriculum, program and attitude—can provide a unique opportunity to achieve educational equity and to increase educational quality in the school system; and

WHEREAS, on April 21, 1980, the Department of Justice informed the Board of its conclusion that the Board is guilty of unlawful segregation of students on the basis of race and that it is prepared to file suit against the Board unless voluntary compliance to remedy the alleged violations of law can be assured; but invited the Board to enter into negotiations aimed at reaching an agreement that would resolve the matter; and

WHEREAS, the Board further believes that litigation over desegregation liability issues would be protracted, divisive in the community rather than healing, and wasteful of resources that can better be devoted to achieving the educational goals of the school system; and

WHEREAS, the Board of Education of the City of Chicago has reviewed and considered the Consent Decree attached hereto and has determined, for the reasons set forth above

and in the Consent Decree, the entry of the Consent Decree by the United States District Court for the Northern District of Illinois would be in the best interests of the students served by the Board of Education, now therefore

BE IT RESOLVED, by the Board of Education of the City of Chicago as follows:

That, following the filing of a Complaint by the United States, Counsel for the Board is authorized and directed to execute the Consent Decree (attached hereto as Exhibit "A") on behalf of the Board and to seek judicial approval and entry of the Consent Decree.

That the Committee on Student Desegregation is authorized to direct and monitor the implementation and compliance by the Board with the Consent Decree and to report periodically to the Board on the status of such implementation and compliance.

IN THE

United States District Court

FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

UNITED STATES OF AMERICA, *Plaintiff,* vs. BOARD OF EDUCATION OF THE CITY OF CHICAGO, *Defendant.*	No. 80 C 5124

CONSENT DECREE

1. The United States has filed a complaint alleging that the Board of Education of the City of Chicago (the "Board") has engaged in acts of discrimination in the assignment of students and otherwise, in violation of federal law. The United States alleges further that such acts have had a continuing system-wide effect of segregating students on a racial and ethnic basis in the Chicago public school system.

2. In addition, the United States Department of Health, Education and Welfare ("HEW") in 1979 and in 1980 found the Board ineligible for funding under the Emergency School Aid Act on the basis of its determinations that the Chicago public school system is characterized by racially segregated and over-crowded schools. Following a presentation of facts by the Board in defense of its actions, these HEW determinations were reaffirmed by the Department of Education on June 12, 1980.

3. The Board neither admits nor denies the allegations of the complaint in this action. It recognizes, however, that the Chicago public school system is characterized by substantial racial isolation of students.

4. The Board believes that racial isolation is educationally disadvantageous to all students and that educational benefits will accrue to all students through the greatest practicable reduction in the racial isolation of students.

5. The Board believes that litigation of this action would require a substantial expenditure of public funds and a substantial commitment of Board and staff time and resources, at a time when financial and personnel resources are already greatly limited, and that such resources can more appropriately be used to achieve the educational goals of the school system. The parties further believe that litigation of this action would be protracted and that settlement of the action is in the public interest.

6. In light of these considerations, the parties, as indicated by the signatures of their counsel below, have determined to settle this action and resolve the United States' request for injunctive relief by entry of this consent decree. The parties submit to the jurisdiction of the Court and acknowledge that subject matter jurisdiction exists over this action under the Fourteenth Amendment of the United States Constitution; under Titles IV and VI of the Civil Rights Act of 1964, 42 U.S.C. 2000c and 2000d; and under 28 U.S.C. Sec.1345. The Board waives the notice provisions of those acts. Both parties waive the entry of findings of fact and conclusions of law. Each party shall bear its own costs.

7. Both parties agree that this Consent Decree is final and binding as to the issues resolved herein. The Court shall retain jurisdiction of this action for all purposes, until a final order is entered terminating this litigation.

8. In the event that objections or challenges are raised (e.g., through intervention or separate collateral lawsuits) to the lawfulness or appropriateness of (a) this decree, any provision hereof, or proceedings pursuant hereto, or (b) any aspect of the desegregation plan provided for in Part I hereof after approval of the plan by the Department of Justice or by the Court, the Board and the Department of Justice shall defend the lawfulness and appropriateness of the matter challenged. If any such collateral lawsuit arises in state

court, the parties shall seek to remove such action to the U.S. District Court.

WHEREFORE, the parties having freely given their consent, the terms of the Decree being within the scope of the complaint, and the terms of the Decree being fair, reasonable and adequate, it is hereby ORDERED, ADJUDGED, and DECREED that:

I. STUDENT DESEGREGATION

1. *Systemwide Remedy.* The Chicago Board of Education (the "Board") will develop and implement a system-wide plan to remedy the present effects of past segregation of Black and Hispanic students.

2. *Basic Objectives.*

   2.1 *Desegregated Schools.* The plan will provide for the establishment of the greatest practicable number of stably desegregated schools, considering all the circumstances in Chicago.

   2.2 *Compensatory Programs in Schools Remaining Segregated.* In order to assure participation by all students in a system-wide remedy and to alleviate the effects of both past and ongoing segregation, the plan shall provide educational and related programs for any Black or Hispanic schools remaining segregated.

   2.3 *Participation.* To the greatest extent practicable, the plan will provide for desegregation of all racial and ethnic groups, and in all age and grade levels above kindergarten.

   2.4 *Fair Allocation of Burdens.* The plan shall ensure that the burdens of desegregation are not imposed arbitrarily on any racial or ethnic group.

3. *Board Discretion in Plan Development.*

   3.1 *Board Discretion in Selecting from Alternatives.* The Department of Justice recognizes that there is a broad range of constitutionally acceptable plans

that will fulfill the basic objectives stated in Part 2. The Department of Justice further recognizes the Board's familiarity with and sensitivity to the unique situation presented in Chicago, and the authority of the Board, in its discretion, to select from within the constitutional range the plan that best meets the needs of the Chicago School District.

3.2 *Racial/Ethnic Balance of Specific Ratios Not Required.* The parties recognize that courts have not required specific racial ratios in schools as a necessary remedy in desegregation cases, that racial and ethnic balance throughout the Chicago School District is neither practicable nor required, and that no particular definition of a desegregated school is required.

4. *Techniques.* In establishing desegregated schools, the Board may use the following techniques, among others:

4.1 *Voluntary Techniques.*

4.1.1 Permissive transfers that enhance desegregation, with transportation at Board expense.

4.1.2 Magnet schools that enhance desegregation.

4.1.3 Voluntary pairing and clustering of schools.

4.1.4 If magnet schools or other voluntary techniques are used, each shall contain racial/ethnic goals and management controls (e.g., an alternative that would require mandatory re-assignments) to ensure that the goals are met.

4.2 *Mandatory Techniques Not Involving Transportation.*

4.2.1 Redrawing attendance areas.

4.2.2 Adjusting feeder patterns.

4.2.3 Reorganization of grade structures, including creation of middle schools.

4.2.4 Pairing and clustering of schools.

4.2.5 Selecting sites for new schools and selecting schools for closing to enhance integration.

4.3 *Mandatory Reassignment and Transportation.* Mandatory reassignment and transportation, at Board expense, will be included to ensure success of the plan to the extent that other techniques are insufficient to meet the objective states in Sec. 2.1. The plan may limit the time or distance of mandatory transportation to ensure that no student shall be transported for a time or distance that would create a health risk or impinge on the educational process. These limitations may vary among different age and grade levels.

4.4 *Priority and Combination of Techniques.* The plan may rely upon the techniques listed above and any other remedial methods in any combination that accomplishes the objective stated in Sec. 2.1.

5. *Exceptions.*

5.1 *Justification for Remaining Identifiable Minority Schools.* With respect to any schools that remain identifiable as Black or Hispanic schools, the plan shall provide specific justification in terms of practicability (i.e., educational or practical considerations), in the context of the extent to which the plan as a whole achieves the objectives stated in Part 2.

5.2 *Stably Integrated Schools.* The plan may create exceptions with respect to individual schools which it shows are already stably integrated (or will become stably integrated by the time of implementation of the plan.)

5.2.1 *Initial Exception.* The plan may exclude such schools from reassignment of students if the extent of integration is within a reasonable range of that to be achieved in the schools referred to in Sec. 2.1.

5.2.2 *Subsequent Exception.* The plan may provide for the later exclusion from student reassignment of any initially included school that, through demographic changes or other factors, promises to become stably integrated.

5.2.3 *Subsequent Inclusion.* The plan should include sufficient flexibility to enable any of the techniques outlined above to be applied to any school in which stability of integration is threatened by unforeseen circumstances.

6. *Bilingual Education.* The Board's legal obligations to provide bilingual education for non- and limited-English speaking students shall be discharged in a manner consistent with the overall objectives of the plan. To the extent that students who require bilingual education are reassigned, they shall not be reassigned in a manner that interferes with their participation in bilingual programs.

7. *Compensatory Programs in Schools Remaining Segregated.* To accomplish the objective stated in Sec. 2.2, the plan will include specific programs for Black or Hispanic schools remaining segregated, in the following areas among others:

7.1 Remedial and compensatory educational programs.

7.2 Improved curricula and instructional and evaluative techniques (including the utilization of tests that validly measure student achievement) for academic, vocational and alternative educational studies.

7.3 Pre-service and in-service instruction for administrators, principals, teachers and other school personnel.

7.4 Selection, and evaluation of the performance of, principals and supporting leadership staff.

7.5 Testing, counseling, guidance and student welfare.

7.6 Physical facilities, safety and security.

7.7 Supportive relationships between such schools and groups and institutions in the community and in government.

8. *Overcrowding.* The Board is encouraged but not required to eliminate overcrowded schools. The plan should provide, to the greatest extent practicable considering all the circumstances, for the elimination of racially disproportionate overcrowding of classrooms and school sites.

9. *Discipline.* The plan shall include provisions to ensure that discipline is administered in a non-discriminatory manner.

10. *Resegregation.* The plan shall contain provisions to ensure against resegregation of students after implementation, in the following areas:

10.1 *In-School.* The plan shall include provisions to ensure that students attending desegregated schools are not resegregated within their schools without adequate educational justification. This provision shall apply to the assignment of students to classrooms as well as to programs of instruction.

10.2 *Student Reassignment.* The plan shall include provisions to ensure that students shall not be reassigned in a manner that, considering the district as a whole, causes the resegregation of schools.

10.3 *Structural Adjustments.* The plan shall include provisions to ensure that site selections, construction, school closings, readjustments of attendance areas and feeder patterns, and new placement of mobile classrooms shall be accomplished so as not to cause the resegregation of schools.

10.4 *Educational Program Adjustments.* The plan shall include provisions for utilization in desegregated schools of such of the specific programs referred to in Part 7 hereof as the Board concludes are necessary to ensure against resegregation of such schools.

11. *Facilitating Success of the Desegregation Process.*

    11.1 *Community Involvement.* The plan will establish programs to promote public involvement with and support for the desegregation process.

    11.2 *School Personnel.* The plan will provide for pre-service and in-service training programs for Board personnel such as administrators, teachers, auxiliary staff, bus drivers and monitors.

    11.3 *Other Institutions.* The Board shall endeavor to involve in the desegregation process state and local government, private businesses, colleges and universities, civic and community organizations, labor unions, professional organizations, religious and cultural institutions, the parochial school system and other private schools.

12. *Voluntary Interdistrict Pupil Transfers.* The plan will include provisions, including without limitation the payment of transportation costs, to encourage and facilitate voluntary interdistrict pupil transfers having integrative effects between schools in the Chicago School District and schools in other districts in the Chicago Standard Metropolitan Statistical Area ("SMSA").

13. *Reporting.* The plan shall establish a system of record-keeping and reporting through which the Board's compliance with the provisions of this agreement can be monitored.

14. *Flexibility.* The parties to this agreement recognize that neither the principles set forth above nor the desegregation plan can provide for every contingency and that exceptions will be necessary. The burden is on the Board, however, to justify such exceptions on the basis of educational and practical considerations.

15. *Financial Cost of the Plan.*

15.1 Each party is obligated to make every good faith effort to find and provide every available form of financial resources adequate for the implementation of the desegregation plan.

15.2 Each party reserves the right to seek to add additional parties who may be legally obligated to contribute to the cost of the desegregation plan.

15.3 The parties recognize that financial cost of implementation does not excuse the failure to develop a desegregation plan consistent with the principles set forth in Sections 2-14, and is not a basis for postponement, cancellation or curtailment of implementation of the plan after it has been finally adopted, but is one legitimate consideration of practicability in meeting the objective stated in Sec. 2.1.

16. *Time table.* The plan will be developed in accordance with the schedule set forth in Attachment A and will be implemented beginning with the 1981-82 school year.

17. *Public Participation.* The Board will receive and consider comments and recommendations from all persons and groups during the development of the desegregation plan.

18. *Resolution of Disagreements.* If the parties to this decree are unable to agree as to whether the desegregation plan is consistent with the principles set forth above in Sections 2 through 15, the disagreement will be submitted to the court for resolution.

II. ADDITIONAL PROGRAMS AND PARTIES

1. *Interagency Coordination.* The Department of Justice agrees that it will, pursuant to the Attorney General's authority (including that under Executive Order 11764 to coordinate the enforcement of Title VI of the Civil Rights Act of 1964), initiate and carry forward discussions with other agencies of the federal government to bring about a coordinated affirmative administration of federal grant programs in the Chicago SMSA with the

goal of contributing to the creation and maintenance of stably integrated schools in the Chicago SMSA. These federal programs include, for example, housing, employment and transportation in addition to education.

2. *State Responsibility.*

2.1 The Department of Justice will thoroughly pursue and promptly complete its investigation of whether the State of Illinois should be made a party defendant and be required to assist and support, financially and otherwise, the implementation of the desegregation plan discussed in Part I. The investigation will examine whether the State and/or its agencies have contributed, through action and inaction, to the segregation of, or other discrimination against, students in the Chicago School District.

2.2 Upon completion of the investigation the Department will submit the factual findings thereof to the Court and, if warranted by the results of the investigation, promptly take such enforement action as is appropriate under the circumstances, consistent with the Attorney General's responsibilities under Title IV of the Civil Rights Act of 1964.

3. *Interdistrict Remedies.*

3.1 The Department of Justice will thoroughly pursue and promptly complete its examination of the extent to which interdistrict remedies for segregative conditions in schools in the Chicago school district may be appropriate, including (without limitation) by reason of the possibilities that:

3.1.1 The State of Illinois together with school districts in the Chicago SMSA, or some of them, may have acted in effect as a metropolitan school district with respect to vocational, special and other educational programs; and

3.1.2 The State of Illinois together with State housing agencies and other agencies of state government, including units of local government in the Chicago SMSA, or some of them, may have contributed to the segregation of the races in the Chicago SMSA by racially discriminatory use of state or federal housing laws or programs, or of state or local land use control laws.

3.2 Upon completion of the investigation, the Department will submit the factual findings thereof to the Court and will take whatever enforcement action is appropriate under the circumstances, consistent with the Attorney General's responsibilities under Title IV of the Civil Rights Act of 1964.

4. *LEAA Grant Condition.* The Department of Justice agrees that the entry of this consent decree is a sufficient basis for the removal, from the grant awarded by the Law Enforcement Assistance Administration to the Board on September 10, 1980, (¶80-JS-AX-0043), of the condition relating to Title VI of the 1964 Civil Rights Act and Sec. 815 of the Criminal Justice Improvement Act of 1979.

III. OTHER ISSUES

1. *Classroom Segregation.* The Board will promptly implement a plan to ensure that no student is assigned to a racially/ethnically isolated or identifiable classroom except when the assignment is justified educationally. The plan will be consistent with the Board's application for a waiver of ineligibility for funding under the Emergency School Aid Act ("ESAA") for fiscal year 1979, which was found acceptable by the Department of Health, Education and Welfare ("HEW") and is presently acceptable to the Department of Education.

2. *Bilingual Programs.* The Board will promptly implement a plan to ensure that non- and limited English speaking students are provided with the instructional

services necessary to assure their effective participation in the educational programs of the Chicago School District. The plan will be consistent with the Board's application for a waiver of ineligibility for funding under ESAA for fiscal year 1979, which was found acceptable by HEW and is presently acceptable to the Department of Education.

3. *Faculty Assignment.* The Board will promptly implement a plan to assure that he assignment of full-time classroom teachers to schools will be made in such a manner that no school is identified as intended for students of a particular race, color or national origin. Except as specifically provided herein, the plan shall be consistent with the Board's application for a waiver of ineligibility for funding under ESAA for fiscal year 1979, which was found acceptable by HEW and is presently acceptable to the Department of Education.

   3.1 Not later than November 1, 1981, with respect to the full-time classroom teachers in each school faculty, the racial/ethnic composition and the proportion of experienced teachers will be between plus and minus fifteen percent of the system-wide proportions of such teachers with respect to such characteristics, and the range of educational training will be substantially the same as exists in the system as a whole.

   3.2 The Board will make every good faith effort to follow professional staff assignment and transfer practices which, when taken together as a whole on a frequently reviewed periodic basis, will assure that the racial composition, the experience and the educational background of individual school faculties and administrative staff more nearly approach* the city-wide proportions of minority, experienced, and more extensively trained professional staff; provided however, that nothing in this plan shall

* Plus or minus ten percentage points of city-wide averages for race, experience and training for each type of school facility.

require the assignment or transfer of any person to a position for which he or she is not professionally qualified. The Board will not adopt or follow assignment and transfer practices which will foreseeably result in the racial identifiability of schools based on faculty or administrative staff composition or in unequal distribution of experienced and more extensively trained staff.

3.3 The failure of a particular school or schools to meet the guidelines will not constitute noncompliance with the above guidelines if the district provides a detailed satisfactory explanation justifying such failure to meet the guidelines.

September 24, 1980
Date

ENTER:

s/ MILTON I. SHADUR
UNITED STATES DISTRICT JUDGE

THE UNDERSIGNED CONSENT TO THE ENTRY OF THIS DECREE:

s/ DREW S. DAYS III
DREW S. DAYS III
Assistant Attorney General
Civil Rights Division
U.S. DEPARTMENT OF JUSTICE
WASHINGTON, D.C. 20530
202/633-2151

Attorney for the United States of America

s/ ROBERT C. HOWARD
ROBERT C. HOWARD
PRESSMAN & HARTUNIAN, CHTD.
55 East Monroe Street
Room 4005
Chicago, Illinois 60603
312/372-6475

THOMAS P. SULLIVAN
United States Attorney
219 South Dearborn Street
Chicago, Illinois 60604
312/353-5300

Attorneys for the Board of Education of the City of Chicago

ATTACHMENT A

TIMETABLE FOR PLAN DEVELOPMENT

The following timetable will be followed by the Board pursuant to Part I, Sec. 16, except as modified by agreement between the Board and the Department of Justice or as extended by leave of Court:

October 15, 1980	Appointment of principal plan development consultant(s)
November 17, 1980	Progress report to Justice Department
December 4, 1980	Identification of plan components appropriate for funding in the basic and magnet categories under the Emergency School Aid Act and submission of appropriate funding proposals to the Department of Education
December 15, 1980	Progress report to Justice Department
January 15, 1981	Progress report to Justice Department
February 16, 1981	Progress report to Justice Department
	Prior to adoption of a plan by the Board, the Board will publish the proposed plan and hold public hearings thereon.
March 11, 1981	Completion of final plan and adoption of plan by the Board. The plan will be conveyed to the Justice Department and filed with the Court.

BOARD OF EDUCATION
CITY OF CHICAGO
228 NORTH LASALLE STREET
CHICAGO, ILLINOIS 60601
TELEPHONE 641-3800

KENNETH B. SMITH
PRESIDENT

October 1, 1980

To the Members of the
Board of Education:

Pursuant to my authority under Sec. 2-4, Rules—Board of Education of the City of Chicago, to act between meetings of the Board, this will confirm that the Student Racial Stabilization Quota Plan in effect for the past several years at Gage Park and Morgan Park High Schools is hereby discontinued, effective at the close of 1980-81 school year. This action was taken based upon the consent decree in *United States* v. *Board of Education of the City of Chicago,* unanimously approved at the regular meeting of the Board on September 24, 1980, which provides for a systemwide student desegregation plan.

I further wish to advise you of the results of the telephone poll conducted by my Office on September 30, 1980. Eight (8) Members of the Board approved such action. The remaining three (3) Members were out of the City and could not be reached.

Sincerely,

s/ KENNETH B. SMITH

Kenneth B. Smith
President